

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Sections 3(n) and 332 of) GN Docket No. 93-252
the Communications Act)
)
Regulatory Treatment of Mobile Services)
_____)

COMMENTS OF THE FEDERAL COMMUNICATIONS BAR ASSOCIATION

The Federal Communications Bar Association ("FCBA"),¹ pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429 (1993), hereby comments on the petition filed by Waterway Communications System, Inc. ("WATERCOM"),² seeking clarification or reconsideration of the Commission's Second Report and Order in the above-captioned proceeding.³ Specifically, the FCBA seeks to comment on one issue

¹ The FCBA is a District of Columbia non-profit, non-stock corporation originally founded in 1936. Its voting membership is comprised of more than 1,800 lawyers presently and previously involved in communications law practice. These Comments were prepared by the Association's Land Mobile Practice Committee. As those of any association, the views expressed in these Comments, do not necessarily represent the views of each and every member of the FCBA. Moreover, although FCC employees constitute a portion of the FCBA's membership and are represented on the FCBA's Executive Committee and its various standing committees, those members did not participate in the preparation or consideration of these Comments.

² Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, "Petition of Waterway Communications System, Inc., for Clarification and/or Partial Reconsideration," filed May 19, 1994 ("WATERCOM Petition").

³ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411 (1994) ("Second Report and Order").

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raised by Waterway: a procedural consideration regarding the cancellation of tariffs in accordance with the Second Report and Order.⁴

One of the purposes of the FCBA is to promote "fairness and efficiency in the development and application of communications law and policy at all levels of government" ⁵ In pursuing that purpose, the FCBA supports WATERCOM's request for clarification or modification of the agency's tariff cancellation filing procedures in a way which makes those procedures more fair and efficient.

Carriers recently expended considerable resources to prepare, review, file and distribute tariffs containing the rates and regulations for their telecommunications offerings. These filings were required after the Court of Appeals for the District of Columbia Circuit overturned the agency's forbearance policy that allowed non-dominant carriers to refrain from filing such tariffs.⁶ Now that Congress has amended the Communications Act to allow for the adoption of a forbearance policy for mobile radio service providers, the agency has ordered applicable tariffs to be cancelled.⁷

To ease the additional administrative and financial burdens imposed upon companies, the FCC should clarify or reconsider its Second Report and Order to the extent it requires the cancellation of tariffs filed by commercial mobile radio service

⁴ WATERCOM Petition, at 3-5.

⁵ Constitution of the Federal Communications Bar Association, Article II.

⁶ AT&T v. FCC, 978 F.2d 727 (D.C. Cir 1992), cert. denied, 113 S. Ct. 3020 (1993).

⁷ Second Report and Order, at ¶¶ 178, 289.

providers. The agency should eliminate the requirement to submit filing fees, as WATERCOM suggests, as well as the requirement to file tariff cancellation Supplements in accordance with Section 61.57 of the Commission's rules.⁸ Instead, the FCBA recommends that the Commission simply issue a Public Notice or similar publication indicating that the tariffs subject to the agency's Second Report and Order are deemed cancelled.⁹ This approach would allow companies to avoid the substantial expenses, including the filing fees, associated with the preparation and filing of cancellations.

Moreover, the agency should grant expedited treatment of WATERCOM's Petition. Commercial mobile radio service providers are required to cancel their tariffs within 90 days of Federal Register publication of the Commission's Second Report and Order, which occurred on April 19, 1994.¹⁰ Thus, the deadline for filing a cancellation is July 18, 1994. Any action taken by the Commission should occur well before that date, so that companies may prepare any necessary filings in a timely fashion.¹¹

⁸ 47 C.F.R. § 61.57 (1993).

⁹ To assist in the preparation of such publication, companies could be directed to notify the Tariff Division regarding which tariffs should be deemed cancelled.

¹⁰ 59 Fed. Reg. 18,493 (Apr. 19, 1994); see also Second Report and Order, at ¶ 289.

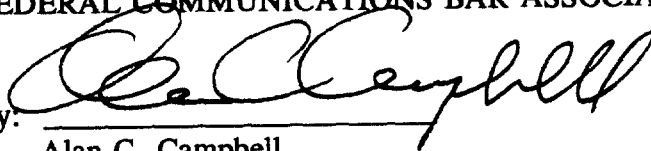
¹¹ Expedited action also is necessary to avoid a postponement in the deadline for filing cancellations. The FCBA does not support any action that would delay the cancellation of tariffs by the current deadline.

The FCBA respectfully supports clarification or reconsideration of the agency's Second Report and Order and recommends expedited adoption of the procedures discussed above for cancelling tariffs.

Respectfully submitted,

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